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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Report of the Ad Hoc Working Group on Comparative Experiences with Privatization on its second session

held at the Palais des Nations, Geneva,
from 7 to 11 June 1993

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INTRODUCTION

1. In accordance with the UNCTAD calendar of meetings, the second session of the Ad Hoc Working Group on Comparative Experiences with Privatization was held at the Palais des Nations, Geneva, from 7 to 11 June 1993.

Opening statements

2. The Deputy Secretary-General of UNCTAD stated that, in studying the responses submitted by various countries on the motivation and scope of privatization, on the techniques applied and on the problems encountered, he had been struck by the vastly differing situations and the diversity of the solutions brought to bear on those situations. This point was of some importance at a time when there was growing concern in international affairs about where to set the boundary between rules that were universal in scope as opposed to responses and conduct that matched specific situations. There was a marked trend in current international negotiations not only to seek generally accepted rules for the conduct of international relations - which was of course desirable - but also to harmonize national policies and, in some cases, to enclose them in a very narrow framework. He felt, however, that the divergencies or differences in national policies could be a source of comparative advantage and could even be necessary for the promotion of development. It was therefore essential to achieve a good balance between the realm of common agreement and predictability on the one hand and those areas in which one should allow for a diversity of measures, especially in the sphere of privatization. Undoubtedly, the exchange of views at the current session would facilitate making this distinction between the universal and the specific, with the result that individual countries would feel free to draw up the most effective policies for dealing with their individual problems. Such an outcome would also help countries to develop their own direct cooperation with multilateral bodies or with their bilateral partners in their efforts to achieve privatization, since there would be a greater readiness to recognize the specific circumstances of each country.

3. The Chief of the Privatization and Enterprise Development Unit said that the secretariat was very grateful for, and encouraged by, the large number of national presentations received, which provided a strong indicator of the great interest shown by Governments in the work of the Ad Hoc Working Group. A total of 31 such contributions had been received from Governments since the first session of the Ad Hoc Working Group had been held in December 1992, most of them in response to a detailed questionnaire sent out by the secretariat. The short lapse of time between the two sessions had imposed a heavy time pressure on Governments, and it was therefore all the more remarkable that so many original, high-quality contributions had been received.

4. The secretariat had also had to operate under great time pressure to prepare the cross-country analysis (TD/B/WG.3/7) and various other documents for the session. As regards the cross-country analysis, while an effort had been made to compare, highlight and, to the extent possible, synthesize the elements contained in the national submissions, the secretariat was aware that it could not do full justice to the wealth of the material contained in the

latter. Nor could it attempt to summarize some 5,000 pages of text into a 35-page document; some selectivity had therefore to be exercised. Further, a cut-off point had to be set for the preparation of the cross-country analysis in order to ensure that it was available in time for the session. This meant that some of the national contributions could not be fully taken into account; some that had arrived after the cut-off date had not been used at all. The secretariat would also have wished to research various parts of the analysis, but this had not been possible because of the time constraint. The secretariat would update and improve the analysis, taking into account in particular those contributions that had not been used fully or at all. Meanwhile, the secretariat would welcome the comments of Governments on the cross-country analysis.

5. In addition to the cross-country analysis, the Ad Hoc Working Group had before it a compilation of the 13 country presentations submitted to the first session, the new individual country presentations, a preliminary edition of an annotated bibliography on privatization and of a directory of national focal points on privatization, as well as information on the activities of international organizations which had been reproduced in the form in which they had been received. In addition, copies of written contributions prepared by members of the panel would also be available.

Chapter I

REVIEW OF THE COUNTRY PRESENTATIONS IN THE LIGHT OF A CROSS-COUNTRY ANALYSIS BY THE SECRETARIAT ON THE DESIGN, IMPLEMENTATION AND RESULTS OF PRIVATIZATION PROGRAMMES

(Agenda item 3)

and

IN-DEPTH CONSIDERATION OF:

(i) TECHNIQUES FOR PRIVATIZATION;

(ii) FINANCING OF PRIVATIZATION, INCLUDING THE ROLE OF FOREIGN INVESTMENT, INTERNATIONAL AGENCIES AND BILATERAL DONORS

(Agenda item 4)

6. For its consideration of agenda item 3, the Ad Hoc Working Group had before it the following report by the UNCTAD secretariat:

"Design, implementation and results of privatization programmes: a cross-country analysis of national experiences" (TD/B/WG.3/7).

7. In addition, the country presentations submitted to the secretariat were circulated to the Working Group in the miscellaneous documents series. (For the list of such presentations, see checklist of documents in annex III below).

8. A number of documents made available to the Ad Hoc Working Group in the miscellaneous series were relevant to the Group's consideration of agenda item 4. (See checklist of documents in annex III below).

A. Informal meetings held during the second session

9. The first phase of the work of the Ad Hoc Working Group consisted of an in-depth consideration of the two main themes (item 4 of the agenda) led by six panellists drawn from different geographical regions. The panellists discussed the objectives of privatization as part of an overall strategy to foster private entrepreneurship and private sector development, and their relationship to the techniques and financing of privatization, as well as particular issues relating to the two main themes. In bringing their expertise to bear on the discussion, they drew on examples from their respective national and other experiences with regard to problems encountered and solutions found.

10. Country presentations on the design, implementation and results of privatization were made available by 31 individual countries; together with

the national presentations submitted for the first session and reproduced for the second session, some 40 national studies were before the Ad Hoc Working Group. In addition, all the six panellists submitted written contributions to the meeting. In the second phase of the work of the Ad Hoc Working Group, 17 countries made presentations of their national experiences. The Working Group held a short discussion, which largely took the form of questions and answers, following each country presentation. Representatives of three intergovernmental organizations made statements explaining their activities in the area of privatization, while some other organizations made available documents that explained their programmes.

B. Proceedings of the 5th (closing) plenary meeting, on 11 June 1993

11. Commenting on the work done at the second session of the Ad Hoc Working Group, the Chairman said that the innovation of organizing a discussion led by national experts acting as panellists had proved to be a success and expressed warm appreciation to them for their valuable and stimulating contributions, which had led to enriched discussions in the informal meetings. He congratulated the secretariat on the arrangements made for this initiative and expressed the hope that a similar exercise would be repeated at future sessions. He had been impressed also by the useful national presentations submitted by a wide range of countries. The high level of the exchanges which had followed those presentations had been another encouraging aspect of the second session.

12. Regarding the report submitted by the UNCTAD secretariat (TD/B/WG.3/7), he stated that, since there had not been time to give due attention to the report during the second session, the Bureau had agreed that the Working Group should consider the report at its third session. It was his understanding that the secretariat would prepare an updated version for this purpose, taking into account the additional country presentations received.

13. The Chief of the Privatization and Enterprise Development Unit introduced the text of a summary which the secretariat had prepared reflecting the main points of the Working Group's informal discussions on policy issues and approaches related to the techniques and financing of privatization. Expressing his appreciation to the Ad Hoc Working Group and the panellists for the excellent work done in a cost-effective manner and to the latter for their helpful comments on the secretariat's paper, he emphasized that the paper was being issued by the secretariat on its own responsibility. While no formal attempt had been made to draw lessons, many of the formulations contained in the secretariat's paper could easily be adapted for this purpose. That would be a matter for Governments to address when they reviewed the text and the conclusions of their work at future sessions of the Working Group.

14. The spokesman for Group B (Netherlands) commended the work of the second session of the Ad Hoc Working Group as a model which could be followed by other Working Groups of UNCTAD.

Action by the Ad Hoc Working Group

15. After a brief exchange of views, the Ad Hoc Working Group agreed that the secretariat should attempt to condense the summary of the main points of discussion to the extent possible. The Working Group further decided that the secretariat summary would be annexed to the report of the Group on its second session so that it would be available for the third session. (For the text of the summary, see annex I below). It was agreed that the summary would be taken up for a first round of discussion under item 3 of the provisional agenda for the third session (cf. annex II). The Working Group would subsequently return to this and all other matters at its fourth session.

Chapter II

ORGANIZATIONAL MATTERS

A. Opening of the session

16. The second session of the Ad Hoc Working Group was opened on 7 June 1993 by Mr. Bror Wahlroos (Finland), Chairman of the Working Group.

B. Election of officers

(Agenda item 1)

17. At its 3rd (opening) plenary meeting, on 7 June 1993, the Working Group elected Ms. Prapada Saranusit (Thailand) as Vice-Chairman, to replace Ms. Panada Thurkhao (Thailand) who was unable to attend the second session. Similarly, at its 4th plenary meeting, on 8 June 1993, the Working Group elected Ms. Carmen Silva (Colombia) as Vice-Chairman, to replace Mr. Ricardo Avila (Colombia).

18. Accordingly, the Bureau of the Ad Hoc Working Group at its second session was as follows:

Chairman:	Mr. Bror Wahlroos	(Finland)
Vice-Chairmen:	Ms. Taos Feroukhi	(Algeria)
	Ms. Carmen Silva	(Colombia)
	Mr. Thomas Janicki	(Germany)
	Ms. Urszula Calka-Jendroszczyk	(Poland)
	Ms. Prapada Saranusit	(Thailand)
Rapporteur:	Mr. Herbert Dzvimbo	(Zimbabwe)

C. Adoption of the agenda and organization of work

(Agenda item 2)

19. At the same meeting, the Working Group adopted the provisional agenda for the second session as approved by the Group at its first session and circulated by the secretariat in TD/B/WG.3/6. The agenda for the second session therefore read as follows:

1. Election of officers

2. Adoption of the agenda and organization of work

3. Review of the country presentations in the light of a cross-country analysis by the secretariat on the design, implementation and results of privatization programmes

4. In-depth consideration of:

(i) Techniques for privatization;

(ii) Financing of privatization, including the role of foreign investment, international agencies and bilateral donors

5. Provisional agenda for the third session of the Ad Hoc Working Group

6. Other business

7. Adoption of the report of the Ad Hoc Working Group to the Board.

20. The Working Group also broadly endorsed the suggested organization of work set out in section III of TD/B/WG.3/6, subject to clarifications of detail made by the Chairman.

D. Provisional agenda for the third session of the Ad Hoc Working Group

(Agenda item 5)

21. At its 5th (closing) meeting, on 11 June 1993, the Ad Hoc Working Group approved the provisional agenda for its third session, as set out in TD/B/WG.3/8. (For the provisional agenda, see annex II below).

22. The Working Group also noted that the third session was scheduled to meet from 29 November to 3 December 1993.

E. Adoption of the report of the Ad Hoc Working Group to the Board

(Agenda item 7)

23. At the same meeting, the Ad Hoc Working Group adopted the draft report on its second session (TD/B/WG.3/L.4) and authorized the Rapporteur to complete the final report as appropriate.

ANNEXES

Annex I

TECHNIQUES AND FINANCING OF PRIVATIZATION

Summary prepared by the UNCTAD secretariat of the main points made in the discussion concerning policy issues and approaches relating to the techniques and financing of privatization*

A. Relationship of objectives to techniques and financing

1. The key objective is to enhance economic efficiency through improved competition and thereby to contribute to economic development. Privatization is part of an overall strategy to foster private entrepreneurship and private sector development as an engine of wealth creation. Thus, it is also necessary to create a favourable environment for the development of entrepreneurship and private enterprise. The significance of privatization lies in the role of the private sector in the efficient use of resources and in the process of modernization of the economy; it thus goes beyond the sale of assets to the private sector. By involving more actors in the management of the national economy, it also contributes to good governance and to the promotion of democracy.

2. Privatization is first and foremost a political process because it involves a change in the role of the State. Defining the extent of the privatization programme at the outset thus assumes a particular importance. While it is a political process, its rationale is economic and it has to be undertaken as an economic exercise within a favourable macroeconomic framework. The need for consensus may also signify the need for concessions so that a consensus can emerge.

3. Privatization involves the sale of State- or publicly-owned property and is subject to close public scrutiny. It cannot be treated as simply a normal commercial transaction. The process calls for clear objectives and guidelines as part of the consensus-building process.

4. The key actors need to be involved in the building up of a broad-based consensus. At the firm level, a consensus is needed in order to obtain the cooperation of the management and of the staff or to avoid acts of sabotage which can make it difficult to sell the company. This can be achieved by persuading them of the merits of privatization for them. Incentives can also be provided by offering a proportion of the shares of privatized companies free or at a discount to the management and employees. At the political level, efforts may be made to associate legislators with the privatization process where political issues are involved; where only technical issues are involved, they may be kept informed ex post. An aggressive political debate,

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* Annexed to the report by decision of the Ad Hoc Working Group at its 5th (closing) meeting, on 11 June 1993 (cf. para. 15 above).

together with an intensive public awareness programme concerning the objectives, targets and benefits of privatization, may be needed in order to achieve a broad-based consensus. Another measure that may be taken for this purpose is the broadening of participation in the ownership of corporate equity by means of public flotations or of mass privatization.

5. Privatization entails the substitution of a private sector culture for a public sector culture. Because the two cultures are quite different, the prospect of a change to a new culture may cause apprehensions among the management and the staff. These apprehensions need to be addressed. In the public sector culture, the State stands behind the balance sheet of a public enterprise; there is no investment or commercial risk for the enterprise. In a private sector culture, such risks are assumed by the enterprise. Further, the private sector operator is well placed to know where to invest profitably. Public enterprise reform without the transfer of investment or commercial risk is only a preparatory step to divestiture. Public enterprises, particularly those which are commercialized or corporatized prior to divestiture, should not be treated differently from private enterprises, i.e. they should act as stand-alone enterprises acting on a commercial basis. In such a situation, subsidies to such enterprise cannot be justified except on social grounds. If subsidies are to be provided, criteria should be established indicating why, for how long and under what conditions they should be given.

6. A consensus on the objectives to be achieved should be followed up quickly by action in order to avoid the risk of renewed pressure for compromise or for delays, which could open the way to corruption and other undesirable developments.

7. The objectives agreed upon need to be translated into techniques, taking into account the specificity and needs of the enterprises to be privatized, the requirements of transparency and costs involved in the use of each technique. For example, if the objective is to cut the "umbilical cord" so as to enable the State to concentrate on its "core" functions, then the transfer of investment risk through a sale may turn out to be better than the transfer of management; and an outright sale may be better than a partial sale. If the enterprises are small ones and the objective is to achieve quick, low-cost sales, then the technique of public auctions may be used. On the other hand, with large enterprises, public offering of shares may be justified, even if it is more costly than a trade sale, if the objectives are to promote wide share ownership and transparency. Further, if the objective or the need of the enterprise is in terms of the injection of foreign capital, new technology and modern management skills, as well as of access to external marketing links and markets, then the technique used may be in the form of sale of majority shares to a "core" corporate investor capable of providing such inputs or of a joint venture with a foreign investor.

8. The choice of methods or of techniques also depends on the size of the public sector. If the public sector is small and operating in a market system, then privatization on a case-by-case basis is sufficient. However, if the public sector is dominant, as in the countries in transition, then different approaches are needed. At the same time, the presence or absence of an adequate economic and legal framework determines the scope and efficiency

of privatization. A combination of measures may be used, including inter alia corporatization followed by sales, mass privatization and the development of intermediaries to provide management expertise and to mobilize domestic resources for private sector development, together with institution-building measures to create the basic structures for private sector or market development.

9. Techniques may also be chosen in order to overcome resistance from management or employees to privatization, such as the use of management and/or employee buy-outs or of public offerings, with special allocations coupled with discounts to the management and staff. Likewise, while building social objectives into the privatization programme may increase its political and social acceptability, such a measure may restrict the choice of firms to be sold, the choice of techniques to be used, increase the cost of implementation (as public flotations are more expensive than trade sales) and also slow down the process of sales.

10. Other considerations to be taken into account in deciding on the techniques to be used are speed, effective ownership and corporate governance, fiscal stability and the cost of the programme.

11. If speed is the criterion, then valuation may be simplified by using the book value which may have no relationship to the real value and internal privatization may be used. However, this criterion may conflict with the considerations of equity, efficiency and of transparency.

12. If the criterion is effective ownership and good corporate governance, then broad-based share ownership will need to be balanced with "core" share ownership to allow for effective corporate governance. However, guarantees are needed in order to prevent abuses by the "core" investors such as "crony capitalism", transfer of shares by the new investor to undesirable partners, use of the ownership rights by the new investor to issue debentures in order to raise the remaining capital needed for financing the transaction, thus devaluing the holdings of the other investors, and other forms of abuses.

13. If the criterion is fiscal stability, then it is necessary to minimize the burden of loss-making enterprises on the Treasury and to generate an adequate cash flow from the process.

14. If the cost of implementation of the programme is the criterion, then a trade-off will need to be struck between getting the most out of the programme and its cost. In other words, techniques such as case-by-case trade sales may not be feasible.

15. If the criterion is the promotion of efficiency and competition, it may be necessary to avoid discrimination against foreign investors and not to define "strategic" sectors too broadly, particularly if national public enterprises have to compete with foreign privatized enterprises in the same industries. Competition is the most powerful weapon against domination. However, a regulatory framework may be needed in order to protect consumer

welfare. Further certain safeguards may be necessary, including the use of "golden shares", in order to prevent corporate actions detrimental to the national interest.

16. Macroeconomic stability is necessary for achieving smooth structural change, including the absorption of any unemployment or other effects of the privatization process, and thus for avoiding any disruption of the stability itself. Together with the achievement of a broad-based consensus, such stability is essential for the achievement of the objectives of privatization. For example, in a country in transition, high inflation and steep devaluation of the currency, together with popular mistrust in the privatization programme on top of regional and political divergences, have substantially reduced the secondary market value of mass privatization vouchers and undermined the mass privatization programme's objective of allowing the general population to share the national wealth.

B. Techniques of privatization: some selected topics

1. Restructuring prior to sales

17. There are various aspects to be considered in relation to restructuring. The first aspect is to define what is available for sale, particularly where a trade sale is envisaged. Corporatization is a first step in the process. A financial review or audit is needed in order to determine what the enterprise has in terms of its assets, including land, and its liabilities, including environmental liabilities; in other words, to establish what the company owns or what the buyer is buying. Where organizational restructuring is needed in order to reduce overstaffing, the State may be able to handle it in a better way than the buyer through the provision of vocational training, negotiation with the trade unions of benefits and other measures for the retrenched workers. This will serve to avoid political and social problems for the new owner. Organizational restructuring in terms of splitting up an enterprise into smaller viable units may also be necessary.

18. The second aspect is to see whether and to what extent financial restructuring is needed. This means looking at its operating structure, the size of its debt and the nature of its creditors (other enterprises, banks, foreign suppliers, etc.). The amount of financial restructuring needed in a trade sale can be the subject of negotiation with a potential buyer. Where the debt liabilities are large, the State may need to absorb them or to assume the major responsibility if such action is needed in order not to undermine the healthy development of the banking system.

19. The third aspect is operational restructuring involving new investment in order to upgrade the company's physical equipment or its technological capacity. Such investment can be costly. As a rule, this form of restructuring should be avoided, because the new investment may not correspond to the buyer's plans and there is no guarantee of recovering the capital invested.

20. Restructuring in whatever form should only be attempted if the enterprise cannot be sold "as is".

21. Investment in some "cosmetic" changes, like cleaning up the plant, coaching the management before the buyer arrives and helping the management to put together a business plan, can yield a high return. It is certainly more cost effective than operational restructuring.

2. Valuation

22. Market valuation is very hard to achieve in those developing countries or countries in transition where capital markets are deficient or absent. In such situations, the bidding procedure provides a useful instrument for giving market forces a say in the valuation of enterprises to be sold. Bidding has the added advantage of providing transparency. Such a procedure is generally applicable to small and medium-sized enterprises. However, in the case of large-scale or complex enterprises, valuation cannot be avoided. Even so, bidding may be used for certain parts of the enterprise to be privatized; this can help to identify where the viable assets are located. Valuation is essential where there is only one prospective buyer. An effective organization of different types of auctions and tenders is also necessary in order to prevent corruption in the privatization process.

23. A common method used for valuation is to calculate the net present value of future cash flows discounted by the cost of capital. The book value method has the disadvantage that it does not always represent the true value in terms, for example, of future income streams. In the case of public utilities, the valuation includes three basic elements: the expected price, the scale of future investment and the tariffs that can be applied.

3. Forms of transfer

24. Forms of transfer include:

- direct sale, full or partial, to general investors;
- private placement with "strategic" investors operating in the industry concerned or to joint venture partners;
- public share offerings on stock markets;
- public auctions;
- sales to management teams or employees;
- sales to investment funds (unit trusts or other types of investment funds);
- liquidation, followed by sale of assets; and
- leasing, management contract or operating concession, with the option of sales.

25. Direct sales or private placement with "strategic" investors can take place with or without competitive bidding. In order to ensure successful sales, an investor search may be conducted in order to identify good potential investors.

26. Due to the costs involved and to the need to ensure success of the operation, public flotation is typically used only for profitable, large enterprises or where a high-profile "core" investor has already taken up a majority shareholding.

27. By contrast, public auctions are normally used for small and medium-sized enterprises or for enterprises which do not require technology transfer such as trading enterprises.

28. Management or employee buy-outs may not always lead to efficiency gains if the changes that are needed cannot be made due, for example, to the fact that it may be difficult to dismiss employee shareholders. Further, the public sector culture may remain embedded in the enterprise. If a new management team needs to be brought in, a management buy-in may be preferable to a management buy-out.

29. Liquidation, followed by the sale of assets, would commend itself where the sale of assets can fetch a higher price than the sale of the entire enterprise. Further, liquidation may be necessary where the enterprise is loss-making and imposing a heavy strain on the budget.

30. Where the intention is to sell the enterprise after a contracting out period, it may be useful to agree on the sale option at the beginning of the contract in order to give an incentive to the contractor to improve the efficiency of the enterprise.

31. Sales of majority shares of enterprises to investment funds are being undertaken in the context of mass privatization programmes in the countries in transition. Such investment funds, by providing management expertise and contributing to good corporate governance, can help to improve the performance of the enterprises to the benefit of the voucher holders with shares in the investment funds.

4. Underwriting

32. Underwriting involves guaranteed purchases at a discount of unsubscribed shares in a flotation by an institutional investor. It has a cost and should be avoided where possible, for example where the shares are so popular that there is a prospect of over-subscription. However, where the enterprise is not attractive to investors or where the share issues are large in a relatively weak or bearish capital market, underwriting may be necessary to insure against the risk of under-subscription. Among other things, an unsuccessful flotation due to under-subscription may be construed as lack of support for the privatization process.

C. Financing: some selected topics

1. Improvement of financial intermediation

33. The rebalancing of the public and private sectors through privatization implies the need to expand the financial mechanisms for private sector development and to make better use of resources, both capital and labour. In this regard, there is a need to reconcile the need for macroeconomic stability with the need for additional credit, for example, for the buying of privatized firms or for the development of small and medium-sized enterprises which can play a vital role in generating greenfield investments, competition and employment. For this purpose, and particularly where capital markets are thin, the number of potential investors is limited and the level of mobilized savings is low, greater attention needs to be given to the development and improvement of the network of financial intermediation, including informal linkages, in order to tap and mobilize domestic savings so that additional credit creation to meet particularly the financing needs of small and medium-sized enterprises for their productive activities can be achieved without inflationary consequences. Successful examples of the development of such networks can be found in various countries. Likewise, their development in the countries in transition can help to tap the "monetary overhang" in order to raise resources in support of privatization and enterprise development in these countries.

2. Internal privatizations

34. Internal privatizations, including management buy-out or buy-in schemes, provide another source of financing. They may be facilitated by the creation of relevant financing schemes and incentive mechanisms, such as credit sales, loans and low-fee leases. In order to improve the corporate governance of privatizable enterprise, new management contracts may be designed for the transitional period from initial or partial privatization to final or full privatization. Such contracts may be applied to enterprises which have a proven recovery potential over a medium-term period and which need new investments and improvements in management and operations in order to become profitable. However, such buy-out schemes may require a change in the enterprise culture in order to succeed.

3. Management contracts

35. Management contracts given either to management companies or to individual contractors with a purchase option constitute an additional source. Careful consideration should be given to whether such contracts should be linked to profitability, a fixed fee or an increase in value. The purchase option may give sufficient incentives to the contractors to restructure or to introduce some changes in order to increase the value of the enterprises at the end of the contract period. Such contracts should be subject to competitive bidding in order to bring in good management teams with sound business plans.

4. Debt-equity swaps

36. Debt-equity swaps may involve a country's or an enterprise's debt. A framework or a financial institution needs to be established to allow the creditors (foreign or State-owned banks, trade suppliers, etc.) to swap their loans for the equity of the privatized enterprises. The process also needs to be properly managed. Debt-equity swaps involving sovereign debt have made substantial reductions in the external debts of several countries.

5. Domestic investors

37. The domestic investors include (1) domestic financial institutions such as banks, insurance companies and pension funds and (2) domestic entrepreneurs and other investors. These investors provide a major source of capital and management know-how.

38. It is necessary to look closely at investors, both domestic and foreign, and qualify them by checking with banks and by accessing the relevant internationally-based databases before going too far, particularly for the sale of profit-making enterprises. Contractual agreements should be drawn up in order to outline their commitments concerning future business and investment plans, with possible penalty clauses for non-compliance. Such agreements could take the form of Memoranda of Understanding setting out the terms of the agreement and reciprocal guarantees granted by the Government and the investors.

6. Foreign investors

39. Foreign investment is often encouraged as a source of capital, new technology, modern management skills and of global linkages. To attract such investment, as well as flight capital, macroeconomic stability and a favourable business environment are essential. Certain economic liberalization measures may also be necessary, for example the liberalization of exchange and interest rates. Restrictions to foreign investments need to be removed, as well as discrimination between foreign and domestic investors. National bilateral agreements have also been used to attract and protect foreign investment.

40. In some cases, privatization projects can themselves be attractive, particularly for those investors, both domestic and foreign, who prefer to buy an existing business with a market share rather than to set up a new business or a new manufacturing capacity in order to acquire a market share. Further, some of the enterprises to be privatized are located in prime sites. Even so, bringing in a foreign investor can prove to be a difficult and lengthy process. This is particularly true of "strategic" or direct investors operating in the same industry, but less so in the case of portfolio investors. Foreign investment is also subject to closer scrutiny by the public and therefore has to be handled with greater attention to national susceptibilities and concerns.

41. Foreign investors should be asked to indicate their commitments, particularly concerning their business and investment plans. While foreign investors need certain guarantees, for example, concerning the security of their investment, their property and ownership rights, the avoidance of double taxation or special taxes on privatization transactions, the nature and level of the liabilities of the privatized firms and capital and repatriation facilities, the Government needs also to impose certain conditions, for example that the foreign investor cannot transfer its newly-acquired asset to another foreign firm without prior Government approval.

Annex II

PROVISIONAL AGENDA FOR THE THIRD SESSION
OF THE AD HOC WORKING GROUP

1. Election of officers

2. Adoption of the agenda and organization of work

3. Review of country presentations in the light of a cross-country analysis by the secretariat on the design, implementation and results of privatization programmes

4. In-depth consideration of:

   (i) Competition and the regulation of privatized monopolies;*

   (ii) Social impact and socially related support measures

5. Provisional agenda for the fourth session of the Ad Hoc Working Group

6. Other business

7. Adoption of the report of the Ad Hoc Working Group to the Board

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* It is understood that this topic would also cover the privatization of public utilities.

Annex III

CHECKLIST OF DOCUMENTS

Submitted to the second session of the Ad Hoc Working Group on Comparative Experiences with Privatization 7-11 June 1993

Symbol	Title	Languages
TD/B/WG.3/6	Provisional agenda and annotations to the provisional agenda: note by the UNCTAD secretariat	A/C/E/F/R/S
TD/B/WG.3/7	Design, implementation and results of privatization programmes: a cross-country analysis of national experiences: Report by the UNCTAD secretariat	A/C/E/F/R/S
TD/B/WG.3/8	Provisional Agenda for the third session of the Ad Hoc Working Group	A/C/E/F/R/S
UNCTAD/DSD/Misc.6	Public enterprise restructuring and privatization - an annotated bibliography: prepared by the UNCTAD secretariat	English
UNCTAD/DSD/Misc.8	Directory of national focal points dealing with privatization - preliminary version: prepared by the UNCTAD secretariat	English
UNCTAD/DSD/Misc.8/ Add.1	Directory of national focal points dealing with privatization - preliminary version: prepared by the UNCTAD secretariat	English
UNCTAD/DSD/Misc.9	Presentation of national experiences with privatization: note by the UNCTAD secretariat	English/French
	Country presentations submitted by:	
TD/B/WG.3/Misc.2	Venezuela	English/Spanish
TD/B/WG.3/Misc.3	Jordan	Arabic/English
TD/B/WG.3/Misc.4	Peru	English/Spanish
TD/B/WG.3/Misc.5	Colombia	English/Spanish
TD/B/WG.3/Misc.5/ Add.1	Colombia	Spanish

Symbol	Title	Languages
TD/B/WG.3/Misc.6	Australia	English
TD/B/WG.3/Misc.7	Bulgaria	English
TD/B/WG.3/Misc.8	Finland	English
TD/B/WG.3/Misc.9	Germany	English
TD/B/WG.3/Misc.10	Indonesia	English
TD/B/WG.3/Misc.11	Jamaica	English
TD/B/WG.3/Misc.12	Lithuania	English
TD/B/WG.3/Misc.13	Morocco	English
TD/B/WG.3/Misc.14	Netherlands	English
TD/B/WG.3/Misc.15	New Zealand	English
TD/B/WG.3/Misc.16	Poland	English
TD/B/WG.3/Misc.17	Portugal	English
TD/B/WG.3/Misc.18	Thailand	English
TD/B/WG.3/Misc.19	Turkey	English
TD/B/WG.3/Misc.20	United Kingdom	English
TD/B/WG.3/Misc.21	France	French
TD/B/WG.3/Misc.22	Niger	French
TD/B/WG.3/Misc.23	Activities undertaken by international organizations in the field of privatization; replies to the UNCTAD questionnaire	English
TD/B/WG.3/Misc.23/Add.1	Activities undertaken by international organizations in the field of privatization; replies to the UNCTAD questionnaire	English
	Country presentations submitted by:	
TD/B/WG.3/Misc.24	Sri Lanka	English
TD/B/WG.3/Misc.25	Ghana	English
TD/B/WG.3/Misc.26	Nigeria	English
TD/B/WG.3/Misc.27	Republic of Korea	English
TD/B/WG.3/Misc.28	Egypt	English
TD/B/WG.3/Misc.29	Brazil	English
TD/B/WG.3/Misc.30	Provisional list of participants	English
	Country presentations submitted by:	
TD/B/WG.3/Misc.31	United States of America	English
TD/B/WG.3/Misc.32	Greece	English
TD/B/WG.3/Misc.33	The Philippines	English
TD/B/WG.3/Misc.34	Pakistan	English

Annex IV

MEMBERSHIP AND ATTENDANCE*

1. The following States members of UNCTAD, members of the Ad Hoc Working Group, were represented at the session:

Algeria
Argentina
Belgium
Brazil
Chile
China
Colombia
Croatia
Cuba
Czech Republic
Denmark
Egypt
Finland
France
Germany
Greece
Hungary
Iraq
Italy
Japan
Lebanon
Mexico
Morocco
Netherlands
Nigeria
Norway
Poland
Portugal
Republic of Korea
Romania
Russian Federation
Senegal
Slovakia
Sri Lanka
Thailand
Turkey
United Kingdom of Great Britain and Northern Ireland
United States of America
Zimbabwe

2. The following other States members of UNCTAD, not members of the Ad Hoc Working Group, were represented as observers at the session:

Afghanistan
Austria
Bulgaria
Cameroon
Ecuador
El Salvador
Ethiopia
India
Indonesia
Ireland
Israel
Jordan
Nepal
New Zealand
Niger
Panama
Paraguay
Peru
Philippines
Slovenia
Sweden
Switzerland
United Republic of Tanzania
Venezuela

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* For the list of participants see TD/B/WG.3/INF.2.

3. The Economic Commission for Europe was represented at the session. The International Trade Centre UNCTAD/GATT was also represented at the session.

4. The following specialized agencies were represented at the session:

International Labour Organisation
World Health Organization
World Bank
International Monetary Fund
United Nations Industrial Development Organization

5. The following intergovernmental organizations were represented at the session:

Asian-African Legal Consultative Committee
European Community
Organization of African Unity
Commonwealth Secretariat

6. The following non-governmental organizations were represented at the session:

General Category

International Chamber of Commerce
International Confederation of Free Trade Unions
International Co-operative Alliance
International Road Transport Union
World Assembly of Small and Medium Enterprises
World Federation of Trade Unions
World Federation of United Nations Associations

Special Category

International Air Transport Association

Annex V

Panellists for the Second Session of the Ad Hoc Working Group on Comparative Experiences with Privatization

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4. Dr. G.F. Mbowe
Chairman, Presidential Commission on Privatization
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5. Mr. Neil Murdoch
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